

105TH CONGRESS
2D SESSION

H. R. 4581

To amend the Federal Trade Commission Act to provide that certain advertisements of a dietary ingredient or dietary supplement shall not be considered to constitute an unfair or deceptive practice, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 1998

Mr. CRAPO (for himself, Mr. CANNON and Mr. STUMP) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Federal Trade Commission Act to provide that certain advertisements of a dietary ingredient or dietary supplement shall not be considered to constitute an unfair or deceptive practice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Dietary Supplement
5 Fairness in Advertising Act”.

6 **SEC. 2. ADVERTISING OF DIETARY SUPPLEMENTS.**

7 Section 5 of the Federal Trade Commission Act (15
8 U.S.C. 45) is amended by adding at the end the following:

1 “(o) ADVERTISING OF DIETARY INGREDIENTS AND
2 DIETARY SUPPLEMENTS.—

3 “(1) DEFINITIONS.—In this subsection:

4 “(A) DIETARY INGREDIENT.—The term
5 ‘dietary ingredient’ means a dietary ingredient,
6 within the meaning of the Federal Food, Drug,
7 and Cosmetic Act (21 U.S.C. 301 et seq.).

8 “(B) DIETARY SUPPLEMENT.—The term
9 ‘dietary supplement’ has the meaning given that
10 term by section 201(ff) of the Federal Food,
11 Drug, and Cosmetic Act (21 U.S.C. 321(ff)).

12 “(2) ADVERTISING.—The making of an adver-
13 tisement by an advertiser for a dietary ingredient or
14 dietary supplement shall not constitute an unfair
15 method of competition, or deceptive act or practice,
16 in or affecting commerce for purposes of subsection
17 (a) if the advertisement is made in a manner con-
18 sistent with—

19 “(A) the provisions of the Federal Food,
20 Drug, and Cosmetic Act (21 U.S.C. 301 et
21 seq.) amended or added by the Dietary Supple-
22 ment Health and Education Act of 1994 (Pub-
23 lic Law 103–417, 108 Stat. 4325); and

24 “(B) this subsection (including paragraph
25 (4), if applicable).

1 “(3) DETERMINATION OF COMPLIANCE.—Be-
2 fore the Commission makes a determination whether
3 an advertisement or advertiser is in compliance with
4 applicable provisions of the Federal Food, Drug, and
5 Cosmetic Act (21 U.S.C. 301 et seq.) for purposes
6 of this subsection, an appropriate official of the
7 Commission shall ensure that the advertiser has the
8 opportunity to consult directly with any individual
9 with appropriate recognized scientific expertise that
10 advised the Commission concerning the applicability
11 of those provisions to the dietary ingredient or die-
12 tary supplement that is the subject of the advertise-
13 ment.

14 “(4) DISCLOSURE OF CERTAIN STUDIES.—

15 “(A) IN GENERAL.—The inclusion, in an
16 advertisement for a dietary ingredient or die-
17 tary supplement that meets the requirements of
18 paragraph (2)(A), of truthful information that
19 is not misleading concerning the usefulness or
20 potential usefulness of a dietary ingredient or
21 dietary supplement based on a study related to
22 that ingredient or supplement shall not be con-
23 sidered to be an unfair method of competition
24 or deceptive act or practice, in or affecting com-
25 merce for purposes of subsection (a) if that in-

1 formation meets the applicable requirements of
2 subparagraph (B).

3 “(B) DISCLOSURE REQUIREMENTS.—In-
4 formation described in subparagraph (A) relat-
5 ing to—

6 “(i) an in vitro study, shall identify
7 the study in the advertisement as an in
8 vitro study and not a human study;

9 “(ii) animal study, shall identify the
10 study in the advertisement as an animal
11 study and not a human study;

12 “(iii) epidemiological study, shall iden-
13 tify the study in the advertisement as an
14 epidemiological study; or

15 “(iv) any other type of study, shall
16 identify the type of study in the advertise-
17 ment.

18 “(5) CONSENT AGREEMENT.—In any case in
19 which the Commission enters into a consent agree-
20 ment under this section relating to a complaint of
21 unfair method of competition, or deceptive act or
22 practice, in or affecting commerce concerning the
23 advertisement of a dietary ingredient or dietary sup-
24 plement, that agreement shall cover only the class of
25 dietary ingredients or dietary supplements that is

- 1 the subject of the complaint and may not apply to
- 2 any other class of products.”.

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